

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 12.7.201, 12.7.202, 12.7.203,)	AMENDMENT AND REPEAL
12.7.204 and the repeal of ARM)	
12.7.205 and 12.7.206 pertaining to)	NO PUBLIC HEARING
commercial bait seining)	CONTEMPLATED

TO: All Concerned Persons

1. On April 22, 2016, the Department of Fish, Wildlife and Parks (department) proposes to amend and repeal the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than March 4, 2016, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.7.201 APPLICATION ~~(1) Any individual desiring to seine for or otherwise capture nongame bait fish (excepting carp, goldfish, and rainbow smelt) in any lake, stream, or other body of water (other than an artificial pond licensed under 87-4-603, MCA) in the state of Montana for sale or commercial distribution, or who desires to transport such bait fish within the state, must make written application to the director for a commercial bait fish seining license upon a form furnished for that purpose signed by the applicant, stating the name and address of applicant, indicating specifically the waters desired for seining or capturing bait fish, declaring whether or not the applicant has had a seining license revoked at any time and stating the date of revocation if such applies and indicating the purpose for which the bait fish are being seined.~~

(1) A commercial bait fish seining license is required for:

(a) the collection of any nongame bait fish, as identified in the current fishing regulations, for the purpose of selling or commercial transportation and distribution;
or

(b) the possession of 24 dozen (288) or more nongame bait fish unless the person is under 15 years of age.

(2) An application for a commercial bait seining license must be submitted on a form provided by the department.

(2) (3) Said application must be accompanied by a fee of \$10 which shall be returned if the application is refused. A \$10 application fee must be submitted with every application. The application fee will be refunded if the application is denied.

~~(3) Any person seining for or capturing such bait fish who shall have more than 24 dozen minnows in his possession within this state shall be deemed seining for sale or commercial distribution and must be licensed as herein provided.~~

~~(4) License shall not be required of any person under 15 years of age who does not seine for or capture more than 24 dozen nongame bait fish per day or have in his possession more than 24 dozen nongame bait fish within this state.~~

~~(5) Unless specifically permitted by statute or other department authorization, bait fish may not be imported into or exported from the state of Montana for commercial or other purposes by a licensee or other person.~~

~~(6) Each year, the department shall describe waters on which commercial seining for bait fish may take place.~~

AUTH: 87-1-301 87-4-609, MCA

IMP: 87-3-204, 87-4-602 87-4-601, 87-4-609, MCA

12.7.202 ISSUANCE ~~(1) Before issuing any seining license, the director must first determine that the applicant has not heretofore had a seining license revoked for cause, and that the waters in which applicant desires to seine have been designated by the commission for the seining desired, and if he so finds, he shall be issued a license which shall expire on the 31st day of December next following, unless earlier revoked as hereinafter provided. The director shall designate on the license the only waters in which the licensee may seine, the type of seining equipment permitted, and the periods, if any, during the term of the license when seining is not permitted.~~

(1) The department shall issue a commercial bait seining license upon approval of an application.

(2) The license must specify the terms of the license.

(3) The department will not license any applicant who has ever had a commercial bait seining license revoked.

AUTH: 87-1-301 87-4-609, MCA

IMP: 87-3-204, 87-4-602 87-4-601, 87-4-602, 87-4-609, MCA

12.7.203 REVOCATION ~~(1) If the director shall find upon evidence submitted to him, that any licensee shall have violated any of the provisions of state law or of these regulations concerning seining, he shall revoke said license and thereafter shall refuse further issuance of a seining license to such person. The director may revoke a license based on sufficient evidence of violation of seining laws, regulations, or terms of the license.~~

AUTH: 87-1-301, 87-4-609, MCA

IMP: 87-3-204, 87-4-602, 87-4-601, 87-4-609, MCA

12.7.204 APPEAL ~~(1) Any person whose seining license has been revoked or an applicant whose application for a license is refused, may appeal such determination to the commission by serving written notice of such appeal upon the director within 20 days after the date of mailing a copy of notice of revocation or~~

~~refusal to the licensee or applicant. Upon receipt of such notice of appeal, the commission shall serve upon the appellant notice of time and place for hearing said appeal not less than 15 days prior to the date set to be held in the offices of the commission in Helena, Montana, or elsewhere as the commission shall order. A person may appeal a determination to deny an application or revoke a license. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, will apply.~~

AUTH: ~~87-1-301~~ 87-4-609, MCA

IMP: ~~87-3-204, 87-4-602~~ 2-4-631, 87-4-601, 87-4-609, MCA

4. The department proposes to repeal the following rules:

12.7.205 HEARING PROCEDURE

AUTH: 87-1-301, MCA

IMP: 87-3-204, 87-4-602, MCA

12.7.206 VIOLATION

AUTH: 87-1-301, MCA

IMP: 87-3-204, 87-4-602, MCA

REASON: These administrative rules have not been updated since 1972 and 1982 and require updating to reflect current procedures and updates in the law. These changes also ensure consistency between recent changes to the fishing regulations concerning use of fish as bait and the administrative rules concerning bait fish collection.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Joel Tohtz, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59601-0701; fax (406) 444-4952; or e-mail jtohtz@mt.gov, and must be received no later than 5:00 p.m., March 18, 2016.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Joel Tohtz at the above address no later than 5:00 p.m., March 18, 2016.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative

Register. Ten percent of those directly affected has been determined to be 6 persons based on the number of commercial bait seining permits that were issued in 2015.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th Street, Helena, Montana 59620-0701, or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State February 8, 2016.